

REMARKS

This is in response to the non-final Official Action currently outstanding with respect to the above-identified application.

Claims 1-30 are pending in this application. Claims 1-19 were withdrawn from further consideration in view of Applicants' response to the Examiner's Restriction Requirement. Claims 29-30 previously were withdrawn from further consideration by the Examiner on the basis that Claims 29-30 are directed to a non-elected invention (Applicants having constructively elected the invention of Claims 20-28 by virtue of the issuance of a substantive action on the merits of those claims). By the foregoing Amendment, a portion of the specification has been amended for clarity, i.e., the word "size" has been substituted for the word "capacity" as more clearly setting forth the meaning intended in the original Japanese text from which this application was translated. In addition, Claims 20 and 25 have been amended so as to more clearly and distinctly set forth the subject matter that Applicants regard as their invention in a manner that Applicants believe places the claims of this application in condition for allowance. Applicants do not propose the addition, the cancellation or the further withdrawal of any claims by the foregoing Amendment. Accordingly, upon the entry of the foregoing Amendment, Claims 20-28, as hereinabove amended, will constitute the claims under active prosecution in this application.

A version of the claims as they will stand upon the entry to the foregoing amendment is set forth above as required by the Rules.

More specifically, it is noted that in the currently outstanding Official Action, the Examiner has:

1. Failed to re-acknowledge Applicants' claim for foreign priority and the receipt by the United States Patent and Trademark Office of the required certified copies of the priority document – **Applicants' claim for foreign priority and the receipt by the United States Patent Office of the required copies of the priority documents were acknowledged in the Official Action dated 27 June 2005.**
2. Failed to reconfirm that the drawings filed on 26 September 2000 in this application are deemed to be acceptable – **The acceptability of the formal drawings filed on 26 September 2000 was previously indicated in the Official Action of 27 June 2005.**
3. It is noted that in acknowledging his consideration of Applicant's Information Disclosure Statement of 6 February 2001 (i.e., Letter requesting correction of the Form PTO-1449 filed with the Information Disclosure Statement filed concurrently with this application) in the Official Action dated 10 November 2004, the Examiner apparently inadvertently used the duplicate Form PTO-1449 that accompanied this application that was submitted with the Letter requesting the correction rather than the new Form PTO-1449 filed therewith such that the Examiner has acknowledged his consideration of JP 5-85916 instead of JP 6-85916 – **Applicants are submitting herewith a copy of the Letter requesting that the corrected Form PTO-1449 be substituted for the Form PTO-1449 as filed concurrently with this application.**

It is respectfully requested that the Examiner sign, date and initial the corrected Form PTO-1449 in confirmation of the consideration by the United States Patent and Trademark Office of all of the art listed therein and provided therewith.

Applicants regret the confusion their attempt to correct the Information Disclosure Statement originally filed with this application apparently has caused;

4. Confirmed his consideration of the art cited in the Information Disclosure Statements filed in this application on 3 May 2004; 8 April 2005 and 20 April 2005 by providing Applicants with signed, dated and initialed copies of the Forms PTO1449/PTO/SB/08a/b filed therewith
5. Indicated that Claims 20-28 are rejected under 35 USC 103(a) as being unpatentable over the Wiser reference (US Patent No. 6,385,596).

With respect to items 1-4 above, Applicants believe that further comment in these Remarks is not necessary.

With respect to item 6, Applicants respectfully note that in the currently outstanding Official Action the Examiner has withdrawn his rejection of Claims 20-28 based upon an alleged anticipation of those claims under the terms of 35 USC 102(e) by the Wiser reference (US Patent No. 6, 385,596), and substituted therefor a rejection of those claims as being unpatentable under 35 USC 103(a) in view of the Wiser reference. In the latter regard, Applicants note that the Examiner has taken the position that:

Wiser does not expressly disclose a data reproducing apparatus for reproducing digital data including reproducing apparatus specifying information specifying an apparatus capable of reproduction, comprising a housing containing: a storage apparatus, a first determining apparatus, a control apparatus and a CPU. Wiser discloses a data reproducing apparatus wherein the storage apparatus, the first determining apparatus, the control apparatus and the CPU are remotely interconnected. The Examiner notes, shifting the position of the storage apparatus, the first determining apparatus, the control apparatus and the CPU does not modify the operation of the data reproducing apparatus. The mere fact that the storage apparatus, the first determining apparatus, the control apparatus and the CPU are rearranged and positioned in a housing container is not by itself sufficient to patentably distinguish the instant invention from the prior art. See *In re Japikse*, 181 F. 2d 1019, 86 USPQ 70 (CCPA 1950) Furthermore, applicant has not persuasively demonstrated the criticality of providing storage apparatus, the first determining apparatus, the control apparatus and the CPU in a housing container versus the apparatus disclosed by Wiser. (Emphasis in original)

Applicant respectfully notes that in the above-quoted portion of the Examiner's remarks in the currently outstanding Official Action the Examiner significantly consistently refers to "the CPU" (singular). The Examiner also asserts that there is no patentable distinction between the Wiser **remotely interconnected elements** and the present invention wherein the claimed elements are all located together in a housing. The importance of these facts in the context of the present application, however, will become apparent below.

Further, in his response to Applicants' previous arguments, the Examiner again suggests that in light of "*the broadest reasonable interpretation*" of the claims, he finds that the CPU, which controls the media experience through the web browser, in fact **controls the access** to the "music distribution center" in a manner that subsequently controls its function **to some degree**. (Emphasis added)

In particular, therefore, Applicants understand the Examiner's present position to be essentially the same as in the previous Official Action, namely, that the CPUs respectively controlling the "music distribution center" and the "music licensing center" in the Wiser reference determine what data will be allowed to be downloaded by a specific media player having a particular "passport" without any control thereof being exerted by the content manager (CPU) of the media player. In other words, it appears that the Examiner remains of the belief that there are interactions between the media player under the control of one CPU with the "music distribution center" and the "music licensing center" each under the control of its own respective CPU in the Wiser reference that somehow are indicative of the media player in some manner exerting a "control" over the functions of the "music distribution center" as a result of the interaction between all three CPU's involved via the so-called "passport".

Applicants respectfully disagree and submit that the Examiner's "*broadest reasonable interpretation*" of the claims of this application in fact constitutes an unreasonable stretching of the meaning of the present claims beyond the reasonable scope thereof when the same is determined as it must be in light of the present specification and the plain meaning of the terminology utilized therein. More specifically, the operation of the Wiser system wherein a CPU controlling one part of a system (the media player) interacts with other CPUs controlling one or more other parts of the system (the music distribution center and the music licensing center) during system operation simply is not the same thing as a single CPU controlling all of the claimed elements assembled together in a single housing.

In other words, Applicants respectfully submit that it is somewhat far fetched to say that the input of information to a particular CPU to be acted upon by that particular CPU according to its internal, previously established, programming is an act “controlling” that particular CPU. This is particularly the case in a situation wherein the input provided in no way acts to determine the manner in which the particular CPU will handle the input. Thus, in such a case, the input might be said to cause the particular CPU to operate, but the fact that the particular CPU may be caused to operate does not mean that the source of the input can be said to “control” the manner in which the particular CPU operates (i.e., handles the input provided to it).

Applicants also respectfully submit that the foregoing is significant in the context of the present prosecution. As the Examiner has explicitly admitted, the Wiser reference discloses a system of remotely interconnected elements that depends for its operation upon interactions between and among those elements. The Examiner apparently has failed to recognize in this regard, however, that when read in the manner that he has suggested, **the Wiser reference discloses a closed system in the sense that it encompasses the data source (music distribution center), the reproduction apparatus (media player) and a gating device that determines whether data from the source can be provided to the reproduction apparatus (the music licensing center).** Applicants respectfully submit that this is quite different from, and not suggestive of, a device such as that herein claimed that is not limited as to the sources from which it can receive data except by the capabilities of the elements of the device (i.e., the presently claimed invention is not a closed system wherein by virtue of the remote interconnection of its elements the source of data for reproduction and the control of the availability of the data are specifically defined remotely of the reproduction elements of the device, but rather the presently claimed invention is a device that can receive input data from many sources limited only by the technical capabilities of its components).

Accordingly, the Examiner's above-quoted comments fail to take into account the fact that the present invention is not simply a rearrangement of the elements of the cited reference. In the claimed invention, all of the elements are located together in a housing such that in accordance with the capabilities thereof digital data may be obtained from many different sources and internally processed for reproduction. In other words, the present invention is not dependent upon the characteristics of (nor does it include) the digital data source and/or other remote devices that control the availability of the digital data from the digital data source (i.e., the digital data source [music distribution center] as controlled by another site [music licensing center]) for its operation). In addition, the claimed CPU does not encompass the CPU's that may control the digital data source and/or a site that controls the availability of digital data from the digital data source.

Therefore, Applicants respectfully submit that it is clear that the present invention is not simply a rearrangement of the remotely interconnected parts of the Wiser reference. Further, Applicants respectfully submit that the importance (criticality) of locating the claimed elements within a housing such that the manner of their operation and the reproduction of received digital data are directly controlled by the claimed CPU is apparent once it is recognized that the present invention is to receive digital data **from external (i.e., the internet or otherwise) not from elements constituting part of the device located remotely of the data reproduction apparatus that define the source and availability of the digital data**. Hence, Applicants respectfully submit that the Examiner's reliance upon the Wiser reference is misplaced.

In further support of the foregoing, Applicants respectfully note that as previously stated in these proceedings the Wiser reference discloses that when the media player is first started up, it first searches for the user's passport (which in Wiser is stored in, or in association with, the media player). **If the media player fails to detect the existence of the user's passport, a Web browser is automatically launched that directs the user to the URL of a registration page of a media-licensing center (i.e., the entire concept of the Wiser reference is that the media player is to be tied to external web sites in a closed system).**

Thereafter, a registration process takes place between the user (i.e., the media player) and the media-licensing center prior to the allowance of any further communication between the media player and the Music Distribution Center. (See, Wiser at Column 13). Hence, at the outset of its operation, the Wiser apparatus compels a user (i.e., the media player) to obtain a "passport" that includes both public and private keys to be used in the subsequent reproduction of encrypted music files (either free portions with the public key or purchased complete files with the private key) as well as a consumer certificate from the media-licensing center (i.e., a registration procedure within the closed system disclosed by the Wiser reference).

In addition, in the Wiser disclosure, the "passport" is monitored by a content manager that is in communication with the Media Licensing Center for the purpose of authenticating the validity of the "passport" stored on the media player at the beginning of each transaction. Thus, while consumer certificates associated with the Music Distribution Center disclosed by Wiser apparently have to be updated frequently (say every 2 to 4 weeks, see Wiser at Column 23, lines 31 to 37), the consumer certificates are valid for periods of 1 year and apparently automatically renew themselves (i.e., compel a re-registration by the user's media player at the end of their predetermined period of validity, see Wiser at Column 25, lines 40 – 48).

Therefore, in Wiser, a comparison of valid user certificates is made at the content manager to determine (1) whether or not the Music Distribution Center is allowed to manage particular files, and (2) whether or not the Music Distribution Center is allowed to transfer data to the reproducing apparatus (media player).

The latter feature of the Wiser reference has apparently been interpreted by the Examiner as being a determination of whether or not the reproducing apparatus (i.e., the media player) is capable of reproducing data received from the Music Distribution Center based upon reproduction apparatus specifying information (i.e., the components of a valid “passport” for the media player contained in the media licensing center as monitored by the content manager) and apparatus ID information (i.e., “passport” components stored in association with the media player seeking access to music files for the reproduction thereof).

Applicants again respectfully submit, however, that the Examiner’s position breaks down as it applies to the presently pending claims of this application with regard to the claimed “control apparatus”, with respect to the claimed “CPU” and with respect to the disposition of all of the elements of the present device in the same housing for use in the reproduction of data from many and diverse locations, i.e., not only from within a defined closed system as in the Wiser reference.

More particularly, the Examiner’s position is that the “passport” embodied in a memory associated with the media player enables or disables reproduction dependent upon the determination result (i.e., whether the “passport” components stored in association with the media player match the current “passport” components for that media player present in the media licensing center in a manner such that the content manager allows the download of the music files to the media player).

Thus, as previously mentioned and discussed above, if the foregoing is the case, even the Examiner's present extremely broad interpretation cannot be said to reasonably support the fact that in Wiser **the same CPU** does not control (i) the storage apparatus (in Wiser, the Media Licensing Center and/or the Music Distribution Center), (ii) the first determining apparatus (i.e., the authentication function of the Music Distribution Center), (iii) the control apparatus (i.e., the "passport" stored in association with the media player) and (iv) the reproduction of the digital data enabled by the control apparatus as hereinabove claimed.

In other words, the present invention is directed to a data reproducing apparatus (device) with all of its components located together under the control of a single CPU rather than to a **closed** data reproducing system composed of various widely separated components that limit the digital data that may be reproduced as well as the availability of that digital data to the reproduction device i.e., media player (note in the Wiser reference the media player is contemplated to communicate via the internet, and the Music Licensing Center and the Music Distribution Center are contemplated to be located at widely separated locations and in communication with one another via land lines or the like).

Consequently, Applicants respectfully submit that contrary to the present claims, the Wiser reference cannot justifiably be read in any manner other than including widely separated elements such that those elements cannot be construed as being contained in a housing.

Further, Applicants respectfully submit that Wiser cannot be interpreted as including **a single CPU** controlling all of the elements hereinabove claimed as being contained in a housing, rather than a media player CPU that is different from (and separate from) the CPU(s) controlling the Music Distribution Center and Media Licensing Center contrary to the present claims for the reasons discussed in detail above.

Still further, Applicants respectfully submit that by making the source of the digital data and the gateway determining the availability of that data to the reproducing device part of the disclosed system, the Wiser reference's disclosure, even when given its *broadest reasonable interpretation*, cannot be read in a manner anticipating the presently pending claims or otherwise rendering the present invention as hereinabove claimed unpatentable.

Despite the foregoing, in the interest of advancing the present application toward an ultimate allowance, Applicants by the foregoing Amendment have amended independent Claims 20 and 25 so as to indicate that:

a CPU directly controlling the manner of operation of said storage apparatus, said first determining apparatus, and said control apparatus as well as the reproduction of said digital data enabled by said control apparatus.

Applicants respectfully submit that the foregoing amendment does not introduce any new matter into this application. In addition, Applicants respectfully submit that the foregoing amendment results in the claims of this application being more particularly and clearly directed to the fact that the claimed CPU directly controls the manner of operation of the other claimed elements within the housing as well as the reproduction of the digital data **without reference to an external digital data source or a gateway control of the output of that digital data source.** Hence, Applicants respectfully submit that the claims as hereinabove amended are clearly distinct and nonobvious with respect to the Wiser reference.

In particular, Applicants respectfully submit that a **closed system** wherein the functions of devices (media distribution center, media licensing center) **external to** the reproduction apparatus (media player) operated by their own CPU's interact with the media player's CPU (are caused to operate according to their own internal programming in response to input from the media player's CPU) by way of a status monitoring functions and/or data requests (such as the Wiser Media Licensing Section monitoring the "passport" stored in the media player for the purpose of verifying its validity at the beginning of each transaction) is not the same as the presently claimed invention, nor does it render the presently claimed invention unpatentable within the meaning of 35 USC 103(a)

For each and all of the foregoing reasons, Applicants respectfully submit that the claims of this application as they will stand upon the entry of the foregoing Amendment are in condition for allowance. Reconsideration and allowance of Claims 20-28 as hereinabove amended in response to this communication, therefore, are respectfully requested.

Finally, Applicants believe that additional fees are not required in connection with the consideration of this response to the currently outstanding Official Action. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge and/or credit Deposit Account No. **04-1105**, as necessary, for the correct payment of all fees which may be due in connection with the filing and consideration of this communication.

Respectfully submitted,

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